

REMARKS

The Amendments

Claim 1 is amended to incorporate the substance of claim 9 therein, which is accordingly, canceled.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Rejection under 35 U.S.C. §103

The rejection of claims 1-7, 9 and 13-23 under 35 U.S.C. §103, as being obvious over Schoen (US Pub. No. 2002/0192448 or U.S. Patent No. 6,884,289) in view of Andes (US Pub. No. 2003/0005859), is respectfully traversed. The '289 patent is the patent which issued from the '448 publication. Thus, these documents have the same disclosure and will be discussed as one together, with any references made to the patent.

Schoen fails to disclose or suggest an interference pigment having an "an absorbent layer having a layer thickness of 1 – 100 nm, which comprises at least one: titanium oxynitride or titanium nitride, or a mixture thereof." There is no suggestion in Schoen to modify the pigments disclosed therein to arrive at a pigment according to the claimed invention.

Schoen discloses that a "covering of absorbent pigment particles having a particle size of 1-500 nm" is included in its pigment. Based on Schoen's description of this covering as consisting of pigment particles having a certain defined particle size, applicants urge that Schoen fails to disclose or suggest an "absorbent layer" as defined by applicants' invention. The

absorbent "covering" (D) of Schoen is a collection of discrete particles on the surface of the pigment rather than a contiguous layer. Schoen at col. 3, lines 19-20, refers to part (D) of its pigments as a Layer (D) but clearly states that this "layer" "consists of absorbent pigment particles" having a certain particle size. Thus, it is clear that part (D) of the Schoen pigments is not an absorbent layer, as such would normally be defined.

Further, Schoen provides no suggestion, whatsoever, that its covering of absorbent particles comprise at least one: titanium oxynitride or titanium nitride, or a mixture thereof. Schoen discusses the absorbent material particles at col. 3, lines 19-36, and gives no hint of the use of such materials for the particles.

Andes discloses a pigment having a substrate and two colorless dielectric layers and then an absorbent layer. Andes does not disclose or suggest adding an absorbent layer to a pigment having three colorless dielectric layers of alternating refractive index. Thus, Andes does not disclose or suggest the pigments of the instant claims. Andes discloses a variety of possible materials for its absorbent layer; see, e.g., page 3, paragraphs 0038-0042.

There is no suggestion or reasoning why one of ordinary skill in the art would substitute the covering of absorbent particles in Schoen's pigment with the absorbent layer of Andes. The Schoen pigments require that the adsorbent covering be provided by pigment particles. Substituting such a covering of particles with a layer would be contrary to the teachings of Schoen and, thus, one of ordinary skill in the art would not be motivated to make such a modification. No other reasoning is provided or apparent on the record to support why one of ordinary skill in the art would make such a modification. There is no suggestion from Andes that the adsorbent layer therein would provide particles, as opposed to a homogeneous adsorbent

layer. Further, there is no suggestion of why one of ordinary skill in the art would select, in particular, titanium oxynitride or titanium nitride materials from the long list of possible adsorbent materials provided by Andes.

It is alleged in the Office action that Schoen does not specify any particular absorbent material for its pigments and, therefore, it would have been obvious to use any absorbent material. Applicants respectfully disagree that Schoen does not specify any particular absorbent material. As discussed above, Schoen specifically requires that the absorbent covering be a covering of discrete pigment particles having a particular particle size. Such covering of particles is distinct from the absorbent layer disclosed by Andes. Further, Schoen does give guidance as to its intention of absorbent pigment particles by the several examples it gives; see, e.g., col. 3, lines 19-36. There is no suggestion, therefrom, to provide an absorbent layer nor, particularly, a layer of titanium oxynitride or titanium nitride material.

For all of the above reasons, it is urged that the teachings of Schoen and Andes, as a whole, fail to render the claimed invention obvious to one of ordinary skill in the art. Thus, the rejection under 35 U.S.C. §103 should be withdrawn.

The Obviousness-type Double Patenting Rejection

The obviousness-type double patenting rejection of claims 1-7, 9 and 13-23 over claims 1-11 of U.S. Patent No. 6,884,829 (Schoen et al.) in view of Andes (US Pub. No. 2003/0005859) is respectfully traversed. These references are the same as the ones discussed above in traversing the obviousness rejection. The remarks from the traversal of the obviousness rejection above are incorporated herein by reference. For those same reasons, it is urged that the obviousness-type

double patenting rejection is not supported and should be withdrawn. Since consideration of the full disclosures of Schoen in view of Andes does not render the claimed invention obvious, the claimed invention cannot be an obvious variant of the claims of the Schoen reference viewed in light of Andes.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/John A. Sopp/

John A. Sopp, Reg. No. 33,103
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: MERCK-2862

Date: January 7, 2008
JAS:sb